

Miller Electric Company and Arthur D. Dickerson.
Case 11-CA-13589

January 24, 1991

DECISION AND ORDER

BY MEMBERS DEVANEY, OVIATT, AND
RAUDABAUGH

On August 29, 1990, Administrative Law Judge William N. Cates issued the attached decision. The General Counsel filed exceptions and a supporting brief, and the Respondent filed a brief in support of the judge's decision.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order.

ORDER

The recommended Order of the administrative law judge is adopted and the complaint is dismissed.

Paris Favors, Jr., Esq., for the General Counsel.
Robert O. Sands, Esq. (Ogletree, Deakins, Nash, Smoak & Stewart), of Atlanta, Georgia, for the Respondent.

DECISION

STATEMENT OF THE CASE

WILLIAM N. CATES, Administrative Law Judge. This case was tried before me at Aiken, South Carolina, on April 16 and 17, 1990, pursuant to an amended complaint and notice of hearing (complaint) issued by the Acting Regional Director for Region 11 of the National Labor Relations Board (Board) on February 28, 1990, which in turn was based on a charge originally filed by International Brotherhood of Electrical Workers, Local Union No. 1579 (Union) on November 1, 1989,¹ and thereafter amended on December 15. The Charge was amended a second time by Arthur D. Dickerson (Dickerson), on February 20, 1990. It is alleged in the complaint that Miller Electric Company (Miller, Miller-Dunn, Dunn, or Company) discharged Dickerson on or about December 4, in violation of Section 8(a)(3) and (1) of the Act. The Company timely answered the complaint and admitted certain allegations therein but denied the commission of any unfair labor practices.

All parties were given full opportunity to participate, to introduce relevant evidence, to examine and cross-examine witnesses, to argue orally, and to file briefs. Briefs, which I have carefully considered, were filed on behalf of the General Counsel and the Company.

On the entire record of the case, and from my observation of the witnesses and their demeanor, I make the following

¹ All dates are 1989 unless otherwise indicated.

FINDINGS OF FACT

I. JURISDICTION

The complaint alleges and the Company admits it is a Florida corporation with an office and place of business located at the Savannah River Plant, South Carolina, where it is engaged in electrical construction. During the 12-month period preceding issuance of the complaint herein, a representative period, the Company, in the course and conduct of its business operations, received at its Savannah River Plant (SRP) goods and raw materials valued in excess of \$50,000 directly from points located outside the State of South Carolina. I find the Company is now, and at all times material has been, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. LABOR ORGANIZATION

The complaint alleges, the parties admit, and I find, the Union is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. The Central Issue Presented

It is undisputed that Dickerson was discharged on or about December 4, for refusing to adhere and/or agreeing to adhere to restrictions on any union activities he might engage in. The controlling issue with respect to whether the Company violated the Act by terminating Dickerson turns on whether, at material times herein, he was a supervisor, professional, managerial, and/or confidential employee within the actual or judicially implied meaning of the National Labor Relations Act (Act). The parties agree that if Dickerson is found to be an employee within the meaning of the Act, the Company, by attempting to restrict his union activities, violated the Act; but, if Dickerson is found to be a supervisor or managerial² employee it did not violate the Act by terminating him.

B. Background and Operative Facts

The Company, as well as various other contractors, perform work at a project in South Carolina (near Aiken, South Carolina) known as the Savannah River Plant Project. The SRP produces special nuclear materials for the United States Department of Energy (DOE). At all times material the Bechtel Corporation (Bechtel) has been, and continues to be, the general contractor at the project with overall responsibility for construction of the SRP. The Company more fully described as Miller-Dunn Electric Company operates as a joint venture to perform electrical contracting work at the SRP. Miller, pursuant to the terms of the venture, employs all managerial, administrative, and clerical personnel while Dunn employs the manual or electrical craft employees. The Dunn employees are represented by the Union and work under the terms of a collective-bargaining agreement, how-

² It appears the Company in its posttrial brief has abandoned any contention Dickerson is a confidential employee. The uncontradicted testimony of Dickerson's immediate superior on that particular point establishes Dickerson did not utilize nor have access to information such that he could even be considered to be a confidential employee of the Company. Accordingly, I find it unnecessary to treat that issue any further. Additionally, there is insufficient record evidence to so support a finding that Dickerson has, at any time pertinent herein, a professional employee within the meaning of the Act.

ever, the Union has no representational authority for the employees of Miller. At times material Miller-Dunn had a work force in excess of 1000 employees, 38 of which were exempt employees. At and for sometime before his discharge, Dickerson was one of the exempt employees.

Dickerson commenced working for Dunn Electric as a journeyman wireman in June 1988. After approximately 2 weeks, he was assigned to Dunn's quality assurance department where he conducted quality assurance training for journeymen and others performing manual labor. In carrying out his quality assurance functions, he conducted classroom training that consisted of oral presentations supplemented by overhead slide transparencies and other training devices. Dickerson testified:

I held classroom training for the quality control procedures. We would take a quality control procedure and outline the information in it and, then, present it to the people.

He added:

The quality assurance procedures [were] written by the Miller quality assurance group.

He stated he had not been involved in writing these quality assurance training procedures. Dickerson testified Miller's Resident Manager W. T. Walton (Walton) asked him in early June 1988 about coming to work for Miller.

Dickerson testified he was "hired on the Miller payroll" in a "non-manual role" "in a non-exempt" position in September 1988.³ According to Dickerson, he performed the same tasks for Miller that he had performed for Dunn but his title was changed to that of a quality assurance technician. Dickerson stated he was assigned an office which he shared with Miller training department employee Daniel Timmerman.⁴

Dickerson testified that in December 1988, Resident Manager Walton told him he was being made one of the 38 employees in an exempt pay status⁵ and that his title would be training supervisor. Dickerson was paid at the zone 13 level for exempt employees.⁶ As an exempt employee, Dickerson was accorded certain "unique privileges" not provided to nonexempt employees.⁷ Dickerson testified his duties did not change when he became training supervisor but rather stated his duties remained the same from the time he was made a quality assurance technician in September 1988 until he was terminated in December 1989.⁸

³He testified Resident Manager Walton told him there would not be conflict with his working for Miller and his holding the position he did in the Union.

⁴The parties acknowledge Timmerman was not at any time supervised by Dickerson but rather they both reported to Miller's field superintendent Ratherine Tharin (Tharin) or her predecessor.

⁵Others in the exempt pay status included Walton, area superintendents, assistant superintendents, and certain supervisors. General foremen and foremen are not exempt employees.

⁶The Company's pay zone 13 includes, among others, the area superintendent and supervisors for employee relations, employment, and quality assurance.

⁷Field Superintendent Tharin, Dickerson's immediate supervisor, testified that some of the "unique privileges" Dickerson as well as other exempt employees she described as "top level managers and supervisors" enjoyed were, and are, the accrual of compensatory time, lenient working hours, and annual bonuses "keyed" to performance and cost effectiveness.

⁸I am unwilling to credit Dickerson's testimony regarding the unchanging nature of his job duties. I am persuaded Dickerson attempted to describe his duties (or lack thereof) in a manner he perceived would serve his own best

During certain material times Field Superintendent Tharin had general overall responsibility for the training department⁹ and she described the functions of that department in detail.¹⁰ Tharin testified Dickerson was not only responsible for all aspects of the Company's quality control training but that he was also responsible for various other projects assigned to the training department for development and/or review. Tharin testified Dickerson's duties consistently increased after she became his superior in February 1989. Tharin had Dickerson review all quality control procedures developed by the quality assurance department specifically with regard to technical merit, feasibility, and jobsite impact. She said that although Dickerson had to follow some 40 quality control procedures closely, he produced and/or approved all training outlines or lesson plans for each of those procedures before any of them could be used to teach from. Dickerson was also responsible for the preparation of all slides, transparencies, and handouts used in conjunction with the quality control procedure classes.

Area Superintendent Tharin testified the training department, under Dickerson's guidance, prepared a suggested training matrix, copies of which were distributed to all superintendents in order for the superintendents to assess training needs pertaining to employees under their supervision. The matrix outlined approximately 43 quality control procedures reflecting the title or subject matter of the procedures along with recommended training methods such as reading selected materials and/or attending class lectures as well as reflecting how long the classes would last and suggestions regarding who should attend each of the classes. It is undisputed that Dickerson was the only supervisory type individual present during some of the training classes he conducted. Dickerson determined starting and stopping times, as well as breaktimes, for the training classes. He also determined when those attending the training classes understood, at least to his satisfaction, the materials presented in the classes.

Dickerson acknowledged that in some of the classes he taught, he provided "hands on" training that resulted in those attending the classes being certified or licensed to perform certain types of work. Tharin testified it was left to Dickerson's discretion as to whether anyone would be certified as trained and capable of performing certain specific procedures. Dickerson would, if the journeymen or supervisors attending certain of his classes demonstrated sufficient knowledge and/or skills, issue certification papers for them on procedures such as fiber optics, megger testing, high potential testing, oil dielectric testing, tool inspection, platform aerial work, and cadweld, and maxibolt installations.

Area Superintendent Tharin testified she assigned the development of a craft procedures manual to the training de-

interest without regard for total accuracy. For example, Dickerson denied having any input into the quality control procedures issued by the quality assurance department; however, on self-prepared (June 1989) employee evaluation (Dickerson was dissatisfied with the one given him by his superior) he listed one of his four primary job duties as "responsible for reviewing QCPs and commenting on them so as to improve the quality program." (G.C. Exh. 10.)

⁹Tharin assumed responsibility for the training department in February 1989. Other departments she had overall responsibility for included (1) the payroll department, (2) the computer department, and (3) the document control clerical staff in central shop. Tharin also serves as the Company's overall administrative assistant.

¹⁰Tharin testified in a calm, relaxed, articulate, comprehensive, and candid manner. As such, I have credited her testimony regarding the training department in general and Dickerson's duties and responsibilities in particular.

partment in 1989¹¹ and that she rated Dickerson and training department employee Timmerman on the final product which she said was produced by them and presented to her in 1989. The craft procedures manual not only sets forth detailed information related to electrical work, inspection of tools and equipment, safety, and work verification procedures, it also establishes a detailed manual employee payroll procedure that defines the responsibilities of supervisors related thereto.¹² The manual consists of approximately 70 plus pages and was “created to insure safe [and] efficient work performance.”

The training department produced a 155-page foreman’s training manual in 1989. Dickerson signed off on the document approving it for publication on June 2. Dickerson testified he had extensive help in preparing the manual from training department employee Timmerman. He testified they utilized materials from various sources and he either wrote or reviewed and approved everything in the manual.¹³

Although the manual had not been produced in final form at the time of the trial herein, all portions to be produced by the training department had been completed. Area Superintendent Tharin testified her instructions to Dickerson regarding the portions of the foreman’s manual to be produced by the training department were “make this project happen” “put the thing together,” and let her know “who need[ed] to do what.” Tharin stated:

Our intent was to provide training for all the foremen and general foremen. It would explain their responsibilities. Some of the specific areas we wanted them to instruct them on was effective communication, cost, productivity, and scheduling; how we as a company felt they should handle their jobs.

Tharin testified she and Dickerson discussed who would teach what portions of the manual. She said they envisioned Dickerson teaching 16 of the 32 to 30 total hours of instruction that would be given to the foremen on the manual. Tharin said others envisioned to teach portions of the manual were Company EEO Officer Libby Rushing—teaching the EEO section; Field Superintendent Jimmy Carter—teaching the high voltage and high voltage safety portions; Resident Manager Walton—teaching about the collective-bargaining agreement, and, she (Tharin)—teaching the portions related to payroll and timekeeping.

Area Superintendent Tharin testified she also assigned the training department the task of developing a procedure for the custody, maintenance, and repair of welding machines. She said Dickerson had primary responsibility for the project

which was completed in 1989. She stated that in order to complete this project, Dickerson had to coordinate with the management personnel of the general contractor, Bechtel, in order to incorporate its policies and procedures into the project. She testified he also had to apply and follow guidelines issued by DOE in completing the project. The completed procedure outlines specific responsibilities for superintendents, supervisors, and craft employees related to the custody, maintenance, and repair of 811 welding machines located at the SRP. The procedure includes forms to be utilized by *all* employees at the SRP for issuing, relocating, repairing, maintaining, and inspecting welding machines.

Area Superintendent Tharin credibly testified Dickerson also reviewed various electrical procedures being developed by other contractors such as Bechtel and Westinghouse for “technical merit.” She said that after Dickerson reviewed the various draft procedures and made suggested changes, she forwarded his recommendations to the contractors “for them to change [their] procedure[s].”

It is acknowledged that Company President H. E. Autrey issued a memorandum dated October 20, to all salaried personnel. The memorandum stated:

Most of us are aware that nearly all of our supervisors in the company are, or were, members of the IBEW. This is something we are extremely proud of.

I feel it advisable, however, to inform you that it is against company policy for any salaried (non-hourly) employee to participate in any union activities such as attending union meetings, participating in elections, holding union office or serving on union committees other than those where they are representing management, i.e., labor/management or health and welfare, etc.

Please contact me should you have any questions regarding the above.

Dickerson testified he received a copy of Autrey’s memorandum in his pay envelope on October 24. Dickerson said he asked Area Superintendent Tharin about the memorandum but she was unable to enlighten him thereon. Dickerson testified that thereafter on October 26, Tharin provided him a copy of a “Policy Compliance Agreement” initiated by Autrey which she asked him to sign. The compliance agreement pertained to Autrey’s October 20 memorandum. The compliance agreement reads as follows:

The attached memorandum to *ALL MILLER NON-MANUAL PERSONNEL* serves as notification that it is against Company policy to participate in Union activities. Please complete this Compliance Agreement as indicated below and return to W. T. Walton, Jr., Resident Manager, no later than 9:00 a.m., Friday, October 27, 1989.

HAVING READ THE ATTACHED MILLER POLICY, I DO HEREBY SUBMIT THAT: (Indicate by “X” in appropriate block)

I do presently and will continue to comply with this policy.

I am not in compliance with this policy. I request a meeting with Miller management to review my options for compliance.

¹¹ There had been some work performed on the craft procedures manual in 1988 but work on the Project “fell by the wayside” during that year.

¹² Dickerson denied having anything to do with this manual. He specifically denied performing “work” on the manual or “drafting” or “revising” any part of it. He testified Timmerman performed all the work on this manual. As alluded to elsewhere in this Decision, I find Dickerson’s testimony on this, as well as certain other matters, to fall short of being accurate. Area Superintendent Tharin assigned the project to the training department and evaluated both Dickerson and Timmerman on the finished product. Timmerman, called as a rebuttal witness by counsel for the General Counsel, stated Dickerson reviewed the manual as he (Timmerman) wrote it out. Accordingly, I am persuaded Dickerson, consistent with his general responsibilities for the training department, reviewed the manual in question as it was being prepared.

¹³ Area Superintendent Tharin testified certain sections of the manual were written by individuals from other departments such as the EEO department.

Will not comply with this policy. I request a meeting with Miller Management to review my options.

Signature: (Full name) _____
 Social Security No. _____
 Date: _____
 Witness: _____
 Title: _____ Payroll No. _____¹⁴

Dickerson said that although Tharin asked him to sign the compliance agreement, he refused telling her he was not a supervisor and as such the policy did not apply to him. Dickerson said he asked for, and was granted, a meeting with management. Dickerson met with Resident Manager Walton and Tharin in Walton's office on November 2. Dickerson testified about the meeting as follows:

Basically, they said that the policy did apply to me and that I could either sign the policy agreement or they said I could go to work as a quality control inspector at a substantial cut in pay or I could go to work at material take off at a less substantial cut in pay or I could go back to work with my tools which, of course, would be a substantial cut in pay.

Dickerson said Walton told him he had to sign the compliance agreement because he was a supervisor. Dickerson thereafter exercised his option of speaking with President Autrey. Such a meeting was arranged for and held on November 7. Those present at the meeting other than Autrey and Dickerson were Tharin and a representative of Bechtel, Rich Johansson. According to Dickerson, Autrey told him:

He said that by his interpretation of my job that I had people that were in my charge when I had the classes. Therefore, I was a supervisor and the policy would apply to me.

Dickerson told Autrey he did not think the policy applied to him because he could not hire or fire nor recommend the hiring or firing of employees. Dickerson testified Autrey said he would "check with his lawyers to see how they looked at [his] position and that he would get back to me on it." Dickerson met with Autrey, Resident Manager Walton, and one other individual again on November 9. Autrey told Dickerson he was a supervisor and would have to sign the compliance agreement or if he did not he would be "busted back to [his] tools." Dickerson again asserted he was not a supervisor and Autrey gave him until November 13 to think it over. Dickerson said nothing happened until December 1, at which time he was called into Resident Manager Walton's office and told he would have to sign the compliance agreement or report to a specific work area as a journeyman wireman. Dickerson said he reported to the designated work area the next workday but was not put to work because he was told by the supervisor in charge of that area he did not have a referral from the Union. Thereafter, Dickerson returned to Area Superintendent Tharin's office where he was given some draft procedures to look over.

Dickerson said that after an hour of doing so, he was told by Tharin:

I was being terminated because I was no longer suitable for my present position. There was no suitable work available and that I was no longer suitable for a management position.

Dickerson was terminated that day, December 4.¹⁵

C. Analysis, Discussion, and Conclusions

Inasmuch as the ultimate issue of whether the Company violated the Act turns on whether Dickerson was, at material times herein, a supervisor or manager for the Company, I shall set forth certain legal principles applicable thereto.

Generally speaking, supervisors and managerial employees are excluded from the categories of employees entitled to the benefits of collective bargaining and other protection afforded employees under the Act.

First, it is clear that an individual's status as "supervisor" is not determined by the individual's title or job classification but rather is determined by the individual's functions and authority. See, e.g., *Mack's Supermarkets*, 288 NLRB 1082 (1988).

Section 2(11) of the Act defines a supervisor as follows:

(11) The term "supervisor" means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

The statutory indicia outlined above in Section 2(11) of the Act are in the disjunctive and only one need exist to confer supervisory status on an individual. See, e.g., *Opelika Foundry*, 281 NLRB 897, 899 (1986). However, in order for supervisory status to exist, the exercise of one or more of the above-outlined powers must be accomplished with independent judgment on behalf of management in other than a routine or clerical manner. Stated differently, the statute expressly insists that a supervisor (1) have authority, (2) to use independent judgment, (3) in performing supervisory functions, (4) in the interest of management. These latter requirements are conjunctive. See, e.g., *Hydro Conduit Corp.*, 254 NLRB 433 (1981). The party that alleges supervisory status has the burden of proving it exists. See, e.g., *Commercial Movers*, 240 NLRB 288, 290 (1979). An individual with statutory supervisory authority does not lose that status simply because it is infrequently exercised and supervision of one employee is sufficient if one or more of the statutory indicia of supervisory status is met. *Opelika Foundry*, supra at 899.

The Board, down through the years, has consistently held that supervisors may be discharged for union activity. *Parker-Robb Chevrolet*, 262 NLRB 402 (1982). In *Parker-Robb*, the Board held:

¹⁴ Thereafter, President Autrey clarified his policy regarding supervisors and managers being involved in union activity and at a later date rescinded the policy altogether.

¹⁵ Dickerson was rehired by the Company on December 18, at his same rate of pay but was detailed to the training department of Bechtel pending the outcome of the instant case.

The discharge of supervisors as a result of their participation in union or concerted activity—either by themselves or when allied with rank-and-file employees—is not unlawful for the simple reason that employees, but not supervisors, have rights protected by the Act.

Notwithstanding the general exclusion of supervisors from coverage under the Act, the discharge of a supervisor may violate Section 8(a)(1) in certain circumstances, none of which are present in the case sub judice.¹⁶

Managerial employees are not covered by the Act and are therefore not entitled to its protection. *NLRB v. Bell Aerospace Co.*, 416 U.S. 267 (1974). The Board set forth “the proper legal standard” for determining managerial status in *Simplex Industries*, 243 NLRB 111 (1979). The Board in that case noted:

The Supreme Court and the Board, in determining managerial status, weigh the facts elicited to determine whether or not the persons at issue are involved in the formulation, determination, and effectuation of management policies by expressing and making operative the decisions of their employer, and whether they have discretion in the performance of their job duties independent of their employer’s established policies.

Managerial employees must not only exercise discretion within, or even independently of, established employer policy, they must also be aligned with management. *NLRB v. Yeshiva University*, 444 U.S. 672 (1980). In that regard, the Supreme Court in *Yeshiva University*, noted:

Although the Board has established no firm criteria for determining when an employee is so aligned, normally an employee may be excluded as managerial only if he represents management interests by taking or recommending discretionary actions that effectively control or implement employer policy.

The Board in *Peter Kiewit Sons’ Co.*, 106 NLRB 194, 196 (1953), held that “lecturers” who “plan and present the indoctrination program for all employees and the training program for all supervisors . . . have interests more closely allied with management than with employees.”

Counsel for the General Counsel argues persuasively, on the basis of the evidence, that Dickerson does not qualify as a supervisor within the meaning of the Act. Although Dickerson had the title of training supervisor and even ascribed that title to himself, such does not establish he was in fact a supervisor. An examination of the functions he performed and the authority he exercised establishes his status was other than that of an supervisor. Dickerson was in charge of the training department which had one employee; however, it is undisputed he did not supervise that employee but rather they both reported to Area Superintendent Tharin. It is also undisputed Dickerson did not have or exercise the authority to hire or fire employees and there is no showing he ever effectively recommended such action. It is likewise undisputed that Dickerson did not evaluate the performance

of the one employee in the training department. Although Dickerson had an office with a telephone and was paid in the supervisory (exempt) zone, such does not establish he was a supervisor nor does such require a different result than I have reached herein. It is also undisputed that Dickerson did not attend any supervisory meetings.

The Company contends Dickerson had and exercised at least three functions that qualified him as a supervisor. The Company argues Dickerson responsibly directed employees, possessed the authority to discipline employees, and had the ability to reward employees. Close scrutiny of these three functions as related to Dickerson fails to demonstrate he was a supervisor. Simply establishing the starting times for classes, when breaks would be taken in those classes, and deciding when employees would be released from such classes does not, in my opinion, constitute responsibly directing employees within the meaning of the Act. Dickerson’s immediate superior, Area Superintendent Tharin, testified Dickerson never issued any warnings, reprimands, or employee evaluations during the time she was his superior. The fact Dickerson may have been able to ask an unruly class attendee to leave class does not constitute the type of disciplinary authority envisioned by the Act to establish one as a supervisor within the meaning of the Act. Likewise, I do not find the fact Dickerson could issue certifications to employees who successfully accomplished certain craft procedures to constitute rewarding employees within the meaning of the Act. I am persuaded the Company failed to meet its burden of establishing Dickerson was a supervisor within the meaning of the Act. Therefore, if Dickerson is to be denied the protection afforded by the Act, it will have to be because he, at material times, was a managerial employee.

I am persuaded the Company met its burden of demonstrating that Dickerson was, at material times, a managerial employee and as such was excluded from protection under the Act.

The record contains numerous indications that Dickerson’s functions and duties aligned him with management. All aspects of work performed by the training department and the actual training of employees and supervisors came under his overall responsibility. He served at an executive level as one of approximately 38 exempt employees of the Company. Dickerson had overall responsibility for the development of a foreman’s manual and training course. In preparing the foreman’s training manual, Dickerson had to pass judgment on the appropriateness of the various provisions contained in the manual and what source materials would be used and to what extent in order to instruct the foremen in the policies of the Company. The manual is the guide to train foremen who in turn train or are responsible for the entire work force of craft employees. It is, as contended by the Company, difficult to imagine that an individual would not be considered to be managerial where the individual, as was the case with Dickerson, develops an extensive manual for the training of supervisors. Dickerson, if he had continued his employment with the Company, would have been one of approximately three or four primary trainers who would have utilized the manual to instruct foremen in their fundamental responsibilities with respect to discipline, communication, and motivation. It was envisioned that Dickerson would have taught 16 of the 40 hours of instruction the Company planned to provide its foremen on their responsibilities. Others designated

¹⁶The Board noted in *Parker-Robb*, supra, “The discharge of supervisors is unlawful when it interferes with the right of employees to exercise their rights under Section 7 of the Act, as when they give testimony adverse to their employers’ interest or when they refuse to commit unfair labor practices.”

to teach in the foremen's training program were the resident manager, the employee relations officer, and a field superintendent, all of whom are, without dispute, high-level managers of the Company. As the Board noted in *Peter Kiewit Sons' Co.*, supra, those who plan and present the training for supervisors have interest more closely allied with management than with rank-and-file employees. Thus, I am persuaded the above facts alone establishes Dickerson as a managerial employee. However, other factors add strongly to that conclusion.

Dickerson also had, and exercised, overall responsibility for the development and issuance of a craft procedures manual. That manual deals with various electrical work-related issues and outlines the responsibilities related thereto for various levels of supervision as well as manual craft type personnel. Dickerson, in approving and reviewing the craft procedures manual, had to make decisions that formulated and effectuated the Company's policies related to craft procedures. Such further establishes Dickerson as a managerial employee. His actions both with respect to the foreman's manual and craft procedures manual implemented Company policy.

In developing a written procedure related to the custody maintenance and repair of welding machines, Dickerson again had to make independent decisions that effectuated and implemented company policies. The procedures established by Dickerson were to be, and are, followed by all supervisors and craft employees of *all* contractors performing work at the SRP.

Dickerson was paid at a level designated for higher management. He accrued compensatory time and was subject to bonuses keyed to cost effectiveness and production goals as were other high level managers.

Accordingly, and for all the above reasons, I conclude Dickerson, at material times herein, was a managerial employee excluded from the protection of the Act. Inasmuch as Dickerson was, at material times, a managerial employee, I find the Company did not violate the Act by the actions it took against him. Accordingly, I shall recommend the complaint be dismissed in its entirety.

CONCLUSIONS OF LAW

1. Miller Electric Company is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. Arthur D. Dickerson, at material times herein, did not function as a supervisor for the Company within the meaning of Section 2(11) of the Act.

4. Dickerson, at material times, did serve the Company as a managerial employee.

5. The Company has not engaged in the unfair labor practices alleged in the complaint.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹⁷

ORDER

The complaint is dismissed in its entirety.

¹⁷ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.